IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION No. 15777 of 2004

Between:

Syed Mohiuddin, S/o.S.A.Majeed, aged about 40 years,
R/o.Qts.No.29 (Block-II) Goshamahal, Hyderabad.

..... PETITIONER

AND

1 APSRTC, rep.by its Regional Manager, Adilabad.
2 The Divisional Manager, APSRTC, Adilabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction, especially one in the nature of writ of mandamus; i) declare the action of the respondents in not granting the licence to run the mineral water shop at Nirmal bus stand to the petitioner in terms of tender notification No.02/797(12)/2004, dated 13-5-04 as illegal arbitrary. ii) Consequently direct the respondents to grant licence to the petitioner to run the mineral water shop at Nirmal bus stand in terms of tender notice No.02/797(12)/04 dated 13-5-04.

Counsel for the Petitioner: MR.K.VASUDEVA REDDY

Counsel for the Respondents: MR VTM PRASAD, SC FOR APSRTC

The Court at the admission stage made the following:

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ORDER:

The petitioner participated in a tender in pursuance of a tender notification issued by the respondent Corporation on 13.05.2004 at Nirmal bus stand, for the sale of mineral water. He became the second highest bidder. The first highest bidder went back from running the business. Therefore, the respondent issued the second tender notification in respect of several shop rooms, including the shop room, in respect of which the petitioner became the second highest bidder.

2. The petitioner contends that as per the Circular of the Corporation, he, being the second highest bidder, is entitled to be called for negotiations, and during the negotiations, he should have been given an opportunity to make an offer regarding the amount of the licence to knock the bid in his favour. Para-V of the Circular of the Corporation, dated 20.02.2003 reads as follows:

"V.FINALISATION OF TENDERS BY THE DIVISIONAL TENDER COMMITTEE:

1. The Divisional Tender Committee should meet and finalise the tenders on the date of opening of tenders itself duly following the instructions communicated vide Circular No.21/99-OPD(C) Dated 30.03.1999 and Circular No.31/2002-OPD(C) dated 18.05.2002.
2. The Divisional Tender Committee shall negotiate with the highest tender only to increase the licence fee. The negotiations should be held either on the date of opening of tenders or the date for negotiations should be announced then and there itself, which should not be beyond one week.
3. If the highest tenderer backs out or does not take up the licence for whatsoever reasons, the Tender Committee shall forfeit the EMD paid by the tenderer.
4. The Tender Committee shall negotiate with the second highest tenderer to increase the offer only when the highest tenderer backs out from taking up the licence. If the second highest tenderer agrees to enhance the offer equivalent to the amount offered by the highest tenderer, or more, the Tender Committee shall allot the stall/shop etc. to the second highest tenderer.
5. The entire process of opening tenders and allotment of stalls shall be completed in a month's time from the date of publication of tender notification.
6. When there is no response/poor response to the tenders called for the first

time, tenders have to be called for the second time within a week's time."

3. According to the above terms of the Circular, the Tender Committee shall negotiate with the second highest tenderer to increase the offer only when the highest tenderer backs out from taking up the licence. If the second highest tenderer agrees to enhance the offer equivalent to the amount offered by the highest tenderer, or more, the Tender Committee shall allot a stall to the second highest tenderer.

4. In the representation, made to the respondents, the petitioner mentioned that he is ready to offer more amounts.

5. In the light of the instructions of the Circular and in the light of the offer made by the petitioner, the respondents are directed to negotiate with the petitioner, regarding the licence amount, that is going to be offered by him, which shall not be less than the amount, offered by the highest bidder, and if the petitioner is ready to offer the amount, equivalent to the amount offered by the highest bidder, or more, the respondents shall take a decision, regarding the finalisation of the tender in favour of the petitioner, and issue necessary orders in that regard. If the petitioner offers less than the amount, offered by the highest bidder, the respondents are at liberty to proceed with according to rules and regulations.

6. The Writ Petition is, accordingly, disposed of. No order as to costs.

dsr

ASSISTANT REGISTRAR

To:

1. The Regional Manager, APSRTC, Adilabad

2. The Divisional Manager, APSRTC, Adilabad

3. Two CD copies.